

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DON MARAMAG, et al.,

**Plaintiff(s),**

No. C 12-2156 PJH

v.

## WASHINGTON MUTUAL BANK, F.A., et al.,

# ORDER DENYING APPLICATION FOR TEMPORARY RESTRAINING ORDER

**Defendant(s).**

11 On September 6, 2012, plaintiffs Don Maramag and Bernadina Maramag  
12 ("plaintiffs") filed an "ex parte application" for a temporary restraining order ("TRO"). The  
13 application does not clearly set forth what action of defendants they seek to enjoin, but it  
14 appears that it may be either the foreclosure sale of their home or their eviction from that  
15 home.

16 In any case, plaintiffs' request suffers from a number of deficiencies. First, plaintiffs'  
17 request is styled as an "ex parte application," and the heading indicates that plaintiffs intend  
18 to proceed under Federal Rule of Civil Procedure 65. However, Rule 65 specifically states  
19 that:

20 The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

21 (A) specific facts in an affidavit or a verified complaint clearly show that  
immediate and irreparable injury, loss, or damage will result to the movant  
before the adverse party can be heard in opposition; and  
22 (B) the movant's attorney certifies in writing any efforts made to give notice  
and the reasons why it should not be required.  
23

24 Fed. R. Civ. P. 65(b)(1). Plaintiffs have not complied with either requirement. Thus, to the  
25 extent that plaintiffs seek ex parte relief, such relief is precluded by the Federal Rules of  
26 Civil Procedure. However, plaintiffs did complicate matters by filing proofs of service  
27 showing that defendants were in fact sent copies of the application. But these copies were  
28 sent via regular U.S. mail on Thursday, September 6, and thus would not have arrived

1 more than one or two days before the date noticed by plaintiffs for a hearing on their TRO  
 2 application (September 12). Thus, whether or not plaintiffs truly intended to proceed on an  
 3 ex parte basis, the defendants do not appear to have been afforded an opportunity to  
 4 respond to the application.

5 Second, plaintiffs do not cite to or comply with the correct standard for issuance of a  
 6 temporary restraining order. Requests for temporary restraining orders are governed by  
 7 the same general standards that govern the issuance of a preliminary injunction. See New  
 8 Motor Vehicle Bd. v. Orrin W. Fox Co., 434 U.S. 1345, 1347 n.2 (1977); Stuhlbarg Int'l  
 9 Sales Co., Inc. v. John D. Brush & Co., Inc., 240 F.3d 832, 839 n. 7 (9th Cir. 2001). A  
 10 plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the  
 11 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that  
 12 the balance of equities tips in his favor, and that an injunction is in the public interest.  
 13 Winter v. Natural Resources Defense Council, Inc., 129 S.Ct. 365, 374 (2008).  
 14 Alternatively, the plaintiff may demonstrate that “serious questions going to the merits were  
 15 raised and the balance of hardships tips sharply in the plaintiff's favor,” Alliance for Wild  
 16 Rockies v. Cottrell, 622 F.3d 1045, 1052 (9th Cir. 2010) (citing Lands Council v. McNair,  
 17 537 F.3d 981, 987 (9th Cir. 2008)), “so long as the plaintiff also shows a likelihood of  
 18 irreparable injury and that the injunction is in the public interest,” *id.* at 1053. Plaintiffs do  
 19 not adequately justify their request under the standard of either Winter or Alliance for Wild  
 20 Rockies.

21 Finally, plaintiffs' application is incomprehensible as to a number of critical facts.  
 22 Most importantly, the court cannot determine the nature of the specific relief sought by  
 23 plaintiffs. Plaintiffs confusingly state that they are “entitled to a TRO postponing the  
 24 foreclosure sale,” and that “[u]nless a TRO issues, plaintiffs' property will be sold on March  
 25 4, 2010.” (Dkt. 14 at 12, 15.) Plaintiffs include other references to a foreclosure sale  
 26 occurring on “March 4, 2010,” indicating that the previous quotation was not a typographical  
 27 error. (See id. at 13, 17.) In one other instance, however, plaintiffs state that the sale  
 28 occurred on March 9, 2012. (Id. at 6.) Regardless of which date is correct, it

1 appears that the foreclosure sale has already occurred, thus rendering moot any request  
2 for a TRO directed at preventing a sale.

3 Plaintiffs also make reference to “an eviction action” that is now proceeding against  
4 them, but do not explain the nature of this “eviction action.” If there is an unlawful detainer  
5 action pending against plaintiffs in state court, this court would be prevented from  
6 intervening in that action by the Anti-Injunction Act. The Act “is an absolute prohibition  
7 against enjoining state court proceedings, unless the injunction falls within one of [the]  
8 three specifically defined exceptions.” Atlantic Coast Line Railroad Company v.  
9 Brotherhood of Locomotive Engineers, 398 U.S. 281, 286 (1970). The three exceptions are  
10 narrowly construed, and “doubts as to the propriety of a federal injunction against a state  
11 court proceeding should be resolved in favor of permitting the state action to proceed.” Lou  
12 v. Belzberg, 834 F.2d 730, 739 (9th Cir. 1987). A number of district courts have found that  
13 a stay of unlawful detainer proceedings does not fall into one of the exceptions listed in the  
14 Act. See, e.g., Diaz v. National City Bank, 2012 WL 2129916 at \*2 (S.D. Cal. June 12,  
15 2012); Carrasco v. HSBC Bank USA, N.A., 2012 WL 646251 at \*3-4 (N.D. Cal. Feb. 28,  
16 2012); Sato v. Wachovia Mortgage, FSB, 2012 WL 368423 at \*2 (N.D. Cal. Feb. 3, 2012).  
17 If an unlawful detainer action has concluded, plaintiffs have not stated whether a judgment  
18 has been entered against them or how imminent their eviction is. In any case, plaintiffs’  
19 request is entirely unclear as to the specific relief sought relative to an eviction that can  
20 occur “anytime after September 6, 2012.”

21 For all of the foregoing reasons, plaintiffs’ application for a temporary restraining  
22 order is hereby DENIED.

23 Additionally, the court notes that it has made numerous attempts to contact plaintiffs’  
24 counsel to discuss deficiencies in their filings, but has not received a response from  
25 counsel. When seeking such extraordinary relief as a temporary restraining order, it is  
26 incumbent upon counsel to be reasonably responsive to inquiries from the court. Finally,  
27 the court notes that it has made multiple attempts to make counsel aware of this court’s  
28 requirements regarding chambers copies of documents filed with the court, but the court’s

1 efforts have so far been unavailing. Going forward, counsel shall ensure that chambers  
2 copies are in a format useable by the court for their intended purpose.

3 **IT IS SO ORDERED.**

4 Dated: September 13, 2012



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PHYLLIS J. HAMILTON  
6 United States District Judge  
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